



FitzGerald Morris
Baker Firth
Attorneys & Counselors

John D. Aspland, Jr.
Partner
jda@fmbf-law.com

June 25, 2019

Via ECF Only

Magistrate Judge Daniel J. Stewart
United States District Court
Northern District of New York
James T. Foley U.S. Courthouse
445 Broadway
Albany, NY 12207

Re: Cinthia Thevenin v. City of Troy, et al.
Index No.: 1:16-cv-1115(NAM/DJS)
Our File No.: 11166-0001

Dear Magistrate Stewart:

On June 19, Mr. Harfenist notified me via email that it had been brought to his office's attention that an internal affairs report was produced by Troy Police Department Captain Joseph Centenni which relates to the events underlying Plaintiffs' action. A copy of Mr. Harfenist's June 19, 2019 letter is appended hereto as Exhibit "1".

Upon my inquiry to the City, it appears that Mr. Harfenist is correct and that certain materials had been produced in relation to an internal affairs investigation associated with the personnel file of Sergeant French and which are responsive to certain of Plaintiff's discovery demands.

It is the position of the City that such material is confidential pursuant to New York State Civil Rights Law §50-a as "personnel records used to evaluate performance toward continued employment or promotion, under the control of any police agency." As such, the City is prohibited by §50-a from disclosing such material without the express written consent of the subject officer or a lawful court order. The City further maintains that these records have no bearing on the issues which are dispositive of Defendants' pending motion for summary judgment.

Plaintiff in turn asserts that the internal affairs report and items related to the investigation are subject to the demand and are discoverable as the Federal Court is not bound by state laws of discoverability or privilege. A copy of Plaintiff's June 24, 2019 letter addressing this issue is appended hereto as Exhibit "2". Plaintiff also believes that report and related items could impact

on the Summary Judgment motion to the extent that they may contain new facts and or admissions.

I have discussed this issue with Mr. Harfenist and we have agreed to request a conference with your Honor to seek guidance to resolve this dispute and are prepared to proceed as soon as practicable for the Court.

Very truly yours,

s/ *John D. Aspland, Jr.*

John D. Aspland, Jr.

JDA/mab

Enc.